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WHOLE No. 2841

JURY HAS A PROBLEM

Fixing Value of Pearl Harbor Land.

Shortly before 4 o'clock yesterday afternoon the jury in the case of the United States vs. Bernice Bishop Estate was instructed by Judge Estee and retired in charge of Marshal Hendry to consider

Federal Court convened at 9 o'clock and Mr. Kinney proceeded immediately upon his argument. He freely admitted the necessity for the Pearl Harbor naval station, and pointed out its advantages to Hawaii even more enthusiastically than did Mr. Dunne. He dwelt upon the great amount of shipping likely soon to pass through the North Pacific and said that this would be the half-way point for all of it. Commerce here was only beginning to grow, continued Mr. Kinney and the ocean would soon be covered. beginning to grow, continued Mr. Kin-ney, and the ocean would soon be covered with ships, which would make their ren-dezvous here, as this was on the highway to the trade of the Orient. The United States, he hoped, would dominate this commerce, and the American flag fly from nearly all the vessels. On this ac-count the naval station was a necessity, as an outnost for outfitting vessels and as an outpost for outfitting vessels, and to guard the American fleet. The ex-pense of this improvement should be borne by the people of the United States as a nation, as it was for the p otection of the United States as a whole and not only of the people of Hawaii. For this reason he did not believe it proper that Hawaii or these defendants should be compelled to bear more than their fair share of the burden, and the jury should consider this fact fully. He also referred to the United States attorney's reference to the witnesses for the defendant as ex-travagant in their valuations as showing Mr. Dunne to have a slight touch of this same hysteria, and he thought that the values placed by them were sound. The argument of Mr. Kinney occupied the greater part of the day, and he was followed by Mr. Dunne at 3 o'clock. A rather heated controversy took place be-tween counsel over the remarks of Mr. Dunne, to which Mr. Kinney objected, but the matter was finally settled by the Court, who ordered the United States attorney to proceed with his argument.

Judge Estee's instructions were exhaustive and complete, and were allowed

haustive and complete, and were allowed to be taken into the jury room by the jury. The Court referred first to the scope of the action, giving also a description of the land sought to be condemned, and stating that the question before the jury was, "What is the just compensation to be paid by the United States to the owners thereof?" He charged the jury not to let the circumcharged the jury not to let the circumstance of the United States being a party have any weight upon the value fixed. The jury was also warned against fixing any speculative value, but the limit must be the actual condition of the property

July 6, 1901. "The burden of proving the market value of the interest of the defendant to the lands in question is upon the plain-tiff; in other words, the claim of the plaintiff as to the amount of compensation to be awarded defendant must be proven by the plaintiff by a preponder-

ance of the evidence."
In considering the value of Kuahua Island, the jury was told to take into consideration the fact that it had never been used for residence purposes, and that the island is surrounded by a lagoon and the climate there is excessively hot.

The Court further instructed the jury as to the different and wide range of values placed upon the lands, and stated that it must all be considered together, and the honesty of all witnesses must be assumed until the contrary appears. Referring to the visit made to the land by the jury, the Court said; "The knowledge so acquired may be used by you in determining the weight of conflicting testimony respecting the value of the land

concluding the charge to the jury, Judge Estee summed up the entire ques-

tion as follows:

I have told you that the fair market value of the property as that property actually stood on July 6th, 1501, should be paid for it; and in this behalf I charge you that what this property would bring at a fair public sale, where one party wants to sell and another wants to buy, may be taken as a criterion of its market value. But you must understand that compensation is to be estimated in this case by the actual rights acquired by the government and rights acquired by the government, and not by the use which the government may make of these rights; and there-fore. I instruct you, that the fact that this property may be desired by or necessary to the government, is not to be con-

eldered by you in fixing compensation I further instruct you that the act instruct you that the actual value of this property cannot be en-hanced by reason of the projected im-provement for which it is taken, for this would simply be to make the government pay for an enhancement caused by its own work. And moreover, the willing-ness or unwillingness of the Bishop Estate to part with its property is not a proper element of value; nor can you consider what the Bishop Estate would give rather than be deprived of this property. As I have heretofore said, you determining compensation, limit your attention to the market value of the property as it actually stood on July \$th, 1901, and be guided solely by that.

Some evidence has been introduced by the government showing certain valua-tions sworn to and filed with the assessor, pursuant to the requirements of the Territorial statute in that regard. Upon this subject I charge you that such sworn returns to the assessor are called by law admissions against interest and by law admissions against interest and complainant is pleadings in the case, the competent evidence tending to show the market value of the property referred to therein at that time. You may therefore, and indeed it is your duty to consider such returns along with the other

COMING WITH NEW YEAR GIFTS.



evidence in the case bearing upon the

question of value, of this property I instruct you also that the option given by the defendants to the United States for a portion only of the property now condemned, subject to existing leases held by the Honolulu Sugar Company, is to be considered by you only along with all other evidence bearing on the market value of the property condemned. Your duty is to determine by your verdict the real and true market value of the land in question on July 6th. 1901, by considering all the evidence bear-ing on that point.

The leases referred to in the trial of this case have nothing to do with the value of the interest of the Estate of Bernice Pauahi B'shop, deceased, in this land.

The values of those leases are to be letermined in the near future by this Court in another trial. You cannot settle he value of the interest of the Bishop Estate therefore in the land in question by any reference to these leases; there-fore I instruct you to disregard said leases entirely, in arriving at the value of the interest of the Bishop Estate in this land.

In rendering your verdict you will as-sess, by itself, and as a separate item, the market value on the 6th day of July last, of any improvements that you may find from the evidence to have been on the condemned premises at that date. I further charge you that no direct and

special benefit or benefits to that portion of defendant's land not taken have been proven in this case, and you will there-fore, in arriving at the market value of the portion taken, make no deduction therefrom for benefits to the part not taken.

Gentlemen of the jury, in arriving at a verdict in this case it must be by the unanimous assent of all your members. Under the pleadings in this case, the



CONSUL GENERAL CHARLES MONROE DICKINSON. As a representative of the United States to has been actively engaged in the efforts seems Miss Stone from the hands of the brigands. United States, private property cannot be taken for a public use unless just compensation is paid therefor. I again finally instruct you that you

to be the sole judges of the facts in case. ESTEE, Judge.

and to the instructions offered and re-fused. One of the jurors inquired as to what method could be used in determin-ing a verilet if there was a difference of opinion, and Judge Estee further in-structed that an equation verilet, arrived. There is no question but that the at by a division by twelve of the sum of President is misinformed as to the cor-all the values of jurors could not be at-ditions in regard to lands here, as well lowed. The jury is to determine in its us the labor market. His remark that verdict first the question of condemna-white labor is now cultivating the sutton, second the valuation of the impart of Queensland is not borne cut by provements, third the value of the land, the statements which are received here At 7 o'clock no agreement having been

reached, Judge Estee ordered that the jury be taken to the Hawalian for dinner,

Dredger Will Be Launched Boon.

Work is progressing favorably on the large dredger which is being built at Emme's wharf. The coppering on at Emme's wharf. The coppering on her bottom has been finished, and yesterday the carpenters were busy furnishing the sides with copper plates. The dredger will probably be launched during the beginning of next week. The machinery will be put into her as soon as it arrives. It is at present on its way from the Coast in the bark Gerard C. Tobey, which is now twenty days out from San Francisco.

The lumber for the two smaller seews has arrived on the schooner F. S. Red.

has arrived on the schooner F. S. Red-field, which is now lying right by the Emmes wharf. The lumber is being taken out of her rapidly, and the build-ing of one of the smaller scows has already beens. ing of one of already begun.

A tobacco trust is being formed in

OVER CUBA

Sugar and Tobacco Interests in Unison.

F. M. Swanzy, after a month's absence on the mainland, during which time he travelled across the country and spent travelled across the country and spent come time in New York and Washington on business, returned to the city yesterday on the Serra. Mr. Swanzy was one of the party of Hawalians who called upon President Roosevelt, and who also looked into affairs Hawalian at the various departments. Numerous interviews were beld with members of both the Blouse and Senate, and the members of the party were given every opportunity to become acquainted with the status of affairs at the capital. Mr. Swanzy said yesterday:

"While we were in Washington, we had every opportunity to come in contact with the heads of the various departments, and he had several interviews. At

ments, and he had several interviews. At the suggestion of Mr. John W. Foster, the suggestion of Mr. John W. Foster, the members of our party went to call upon President Roosevelt, very informally. The president received us cerdially, and gave us some time in general conversation, as to the outlook. President Roosevelt did not ask us many questions, as he seemed to have his mind already made up on most points. He talked at some length upon the subject of sugar cultivation. He cited the cultivation of cane in Queensland, saying that the work in the field there, according to his information, was done by white labor, white labor.

"We called upon Secretary Gage and had a very interesting conversation with him, and in his talk he referred to the fact that it was contrary to policy to have large holdings of lands in the hands of private parties, and seemed quite sur-prised when we informed him that this was not the case here, but that the large holdings were by corporations, which have many stockholders. These were the only officials who commented upon conditions here,

"Speaking generally, I do not believe there will be much legislation devoted to Hawaii at this session. Senator Burrows and Congressman Dalzell both said to us that there was so much work to do at home that in their opinion there would be little time to give to far away new territory. I gathered that there will be a hard fight against any possible tariff changes in favor of Cuba, as the tobacco, sugar and beet men will be combined to fight against any such concessions. The beet sugar men are very strong and beet sugar men are very strong, and they will not give up their fight until the last ditch is taken. "The general opinion seems to be that

there will be a very hard struggle be-fore the many reforms suggested by the president become law, as the senate has to be reckoned with, and there are mem-brs who will oppose any radical action. I read the message of the president and I believe that he has not been correctly informed as to local conditions, and that there will have to be much more information gathered on Hawailan affairs before there is any action by Congress."

Among returning sugar men was George A. Fairchild of Kealia, Kauai, the manager of the Makee Sugar Com-pany. Mr. Pairchild, while in San Fran-cisco, made all arrangements for the shipment of the sugar of that estate from Anabola direct to San Francisco. and the receipt there of all supplies direct from the Coast markets. In regard to the outlook for better business condi-

tions, Mr. Pairchild said: "I believe there will be little Coast money come into stocks here very soon, but that need not affect the Islands, as there is the best prospect that we will come out of the temporary duliness all right quite soon. All that is to be done is to reduce expenditures, and then we will work out in a short time. There seems to be a good prospect that there is to be a hard fight made upon the Cu-ban sugar proposition. The beet sugar men and the tobacco men will fight any proposal to bring sugar from Cuba into the United States free, as tobacco must be given the same advantages, and that Exceptions were allowed counsel for means much to the farmers of the South both parties to the instructions given, and to the instructions offered and re-

the statements which are received here through the press of that country. The planters there, according to the trade papers, are in desperate straits, owing to the fact that Oriental labor has been shut out, in response to demands of the Labor party, and the attempt to shut out the kanaka labor, on which the suof their crops. There is much pressure being brought to bear upon the Congress at Melbourne to permit the introduction of the Islanders, who have made the raising of sugar possible in the past.

Telegraph Notes.

Work has been resumed in the famous Calaveras mines.
Irving B. Dudley, United States min-ister to Peru, is dangerously III.
Laberi's law practice has been injur-

ed by his connection with the Dreyfus

During a recent debute on the tariff in the Reichstag there was a scene of disorder

Senator Wellington, of Maryland, who maigned the memory of President Me-Kinley, is shurned by his associates in the Senate chamber. Sixty Chicago millionaires contribut-ed \$50,000 in half an hour for a training school for boys.